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U.S. COURTS  
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REC'D FILED **CS**  
CAMERON S. BURKE  
CLERK, IDAHO

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF IDAHO**  
**The Honorable Larry M. Boyle**

POCATELLO DENTAL GROUP, P.C.,  
an Idaho Professional Corporation,

*Plaintiff,*

vs.

INTERDENT SERVICE  
CORPORATION, a Washington  
Corporation,

*Defendant,*

vs.

POCATELLO DENTAL GROUP, P.C.,  
an Idaho Professional Corporation;  
DWIGHT G. ROMRIELL, individually;  
LARRY R. MISNER, JR., individually;  
PORTER SUTTON; individually;  
ERNEST SUTTON; individually;  
GREGORY ROMRIELL; individually;  
ERROL ORMOND; individually; and  
ARNOLD GOODLIFFE; individually;

*Counterdefendant and*  
*Third-party Defendants.*

Case No. CV-03-450-E-LMB

**SUPPLEMENTAL FILING  
BY THIRD-PARTY  
DEFENDANTS  
DWIGHT G. ROMRIELL,  
GREGORY ROMRIELL,  
ERROL ORMOND, and  
ARNOLD GOODLIFFE  
TO JUNE 28<sup>TH</sup> HEARING  
ON MISNER TRO MOTION**

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### Procedural Context

On June 30, 2004 this Court held a telephone hearing on InterDent's motion for a TRO against Dr. LeRoy "Russ" Misner. This Court allowed until July 8<sup>th</sup> for the Pocatello Dental Group parties to supplement the record and include the full depositions of Dr. Gregory Romriell and Dr. Larry Bybee that had been taken on June 25<sup>th</sup>, shortly before the telephone hearing.

InterDent counsel had argued that Dr. Gregory Romriell, current President of the Pocatello Dental Group, had testified that Dr. Misner's leaving the Pocatello Dental Group was "devastating" and thus a basis for issuing the TRO. That was an out-of-context quote of Dr. Romriell taken from page 55, lines 14-15 of Dr. Romriell's deposition.

When counsel for Dr. Romriell was permitted to address the issue, it was explained to the Court that, had *the full transcript* of Dr. Romriell been furnished the Court by InterDent it would have been apparent that the "devastating" comment by Dr. Romriell was part of an explanation that InterDent's failure to provide adequate staff, supplies, and equipment had essentially driven Dr. Misner and other dentists out of the practice by failing to maintain previously-existing professional levels of service.<sup>1</sup>

Dr. Misner and Dr. Larry Bybee had historically been the two pediatric dentistry specialists at the Pocatello Dental Group. InterDent, whether by virtue of its

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<sup>1</sup> The full transcript of Dr. Gregory Romriell's deposition is attached hereto just before the Certificate of Service.

bankruptcy or otherwise refused to spend the money train and maintain needed pediatric dentistry staff thus forcing Dr. Misner and Dr. Bybee to leave.

This memorandum provides the detail of that explanation<sup>2</sup> given at the telephone hearing that InterDent withheld from the Court.

## **ARGUMENT**

### **INTERDENT CANNOT TAKE ADVANTAGE OF ITS OWN WRONGS AND FAILINGS**

The essence of the following cited testimony of Dr. Romriell is that InterDent has been nothing short of hostile to maintaining the professional — and historically existing — needs of the Pocatello Dental Group dentists.<sup>3</sup> InterDent has

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<sup>2</sup> This Memorandum is limited to just the June 25<sup>th</sup> deposition testimony of Dr. Gregory Romriell, current President of the Pocatello Dental Group. The full deposition testimony of Dr. Larry Bybee is being provided by his counsel, Mr. Hearn.

<sup>3</sup> The failings and refusals of InterDent to maintain and manage the Pocatello Dental Group practice at its historical high level is raised in the Amended Counterclaims of Third-Party Defendants Romriell, Ormond, and Goodliffe:

54. The conduct of Defendant InterDent in its dealings with the professionals and patients at the Pocatello Dental Group has been hostile, tactical, unprofessional, defiant, recklessly indifferent, and *in conscious disregard to the professional standards and good faith for which the Pocatello Dental Group had previously and historically been known* and to which Defendant InterDent was contractually and professionally obligated to respect and honor.

55. Among other things, Defendant InterDent has *subordinated the interests of patients and professionals and the quality of practice to which the Pocatello Dental Group had previously adhered*, \* \* \*

56. The conduct of Defendant InterDent ...was to degrade prior standards and the prior quality of professional and patient relationships.

57. InterDent has further repeatedly refused to make full financial disclosure....

58. The overall net effect of Defendant InterDent's wrongful and calculated conduct is that the essence of the material purposes and reasons for the management contract and the element of good faith and fair dealing in the relationship cease to exist to the professional detriment of the professionals, patients, and staff of the Pocatello Dental Group.

driven away Group dentists by failing to maintain equipment, supplies, and adequate trained staff.

InterDent's seeking to preclude Dr. Misner from treating pediatric patients where InterDent has *prevented* him and Dr. Bybee from doing so boils down to seeking to take advantage of its own wrongs. InterDent chose to not maintain its pediatric dentistry support staff and directed other dentists remaining to refer pediatric patients into the community; Pocatello Dental Group would no longer treat them.

It is fundamental law that a party cannot take advantage of its own wrong: It is "the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed." *Wilkins v. Firemans's Fund*, 107 Idaho 1006, 695 P.2d 391, 393 (1985). *See also, Runcorn v. Shearer Lumber Products*, 107 Idaho 389, 690 P.2d 324, 331 (1984) and *Barnett v. Eagle Helicopters, Inc.*, 123 Idaho 361, 848 P.2d 419, 422 (1993) ("the policy against allowing an employer or its insurer to profit from the employer's own wrong."); *Schiewe v. Farwell*, 125 Idaho 70, 867 P.2d 944, 948 (Ct. App. 1992) ("unconscionable to allow the person against whom the estoppel is sought to maintain a position which is inconsistent with the one in which he accepted the benefit."); *O'Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1098-99 (1991) ("The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created.")

It is also established law that "whether the public interest will be advanced by granting the preliminary relief" is an appropriate consideration in this setting; a TRO

should be denied where, as here, it flies in the face of the “public interest.” *Owner-Operator Independent Driver Association, Inc. v. Swift Transportation Co., Inc.*, 367 F.3d 1108 (9<sup>th</sup> Cir. - May 12, 2004) (Hcadnote 2).

The following quotes from Dr. Gregory Romriell’s deposition make it clear that (1) InterDent forced dentists to leave the Pocatello Dental Group by failing to maintain the practice to historical levels, and (2) precluding Dr. Misner from treating pediatric patients when the Pocatello Dental Group no longer can is contrary to the “public interest.” InterDent has created the very situation it complains of. The following is “the rest of the story” InterDent did not want this Court to hear from Dr. Romriell’s June 25<sup>th</sup> deposition:

**InterDent “Devastating Our Practice”**

Q. What we are here about today, and I am going to try to limit it to this, is Dr. Misner's noncompetete –

A. You asked me earlier about that, and that's the reason that I can't enforce a noncompetete, because *they were devastating our practice*.<sup>4</sup>

— G. Romriell Depo. 44:16-20

**InterDent Made It Impossible To Meet Dentists’ Professional Needs**

**InterDent Failed to Maintain Equipment, Provide Supplies, Train Staff**

A. My recollection would be based upon our recent history with InterDent, that the InterDent dilemma would be the main subject of discussion, our *lack of supplies*, our loss of practice share, our *poor state of training for our staff*, the *disrepair of our equipment*, the inability of InterDent to do marketing within our practice, InterDent's inability to share with us the practice numbers that we need to know to evaluate our practice.

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<sup>4</sup> All emphasis and italics for the quotes cited here are added.

Q. Let's talk about loss of practice share. Now, you have had *dentists leave over the past year or two*, correct?

A. Yes, *for the same reasons*.

— **G. Romriell Depo. 39:2-14**

\* \* \*

A. The statement of obligation, I think that we had as a dental group *an obligation through InterDent to provide Dr. Snow with the things that we had agreed upon* when he came into the group, and *through the actions of InterDent, the negative actions of InterDent, we were not able to provide meeting his contract*. So the contract had been violated and he is free to do his choice.

— **G. Romriell Depo. 20:25-21:6**

\* \* \*

Q. Do you know what their [Dr. Misner & Dr. Bybee] complaints against Pocatello Dental Group are?

A. Yes.

Q. What are they?

A. The *inability to provide trained staff*; the *inability to provide functioning equipment*; the inability to provide *adequate supplies and materials*; the inability to give them the *information and data that they needed* on a practice management basis.

— **G. Romriell Depo. 85:19-86:2**

\* \* \*

Q. Have you been investigating office space on Yellowstone Avenue in Pocatello?

A. *You'd have to be brain dead to not be concerned about your future practice with what InterDent has caused to happen at the Pocatello Dental Group*. They have *decimated the practice*, they have *lost us patients*, we have *lost our specialists*, we have *lost our equipment*, and, yes, I have been looking at alternative options.

— **G. Romriell Depo. 95:5-12**

**Other Dentists Left For the Same Non-Support Reasons Dr. Snow Did**

Q. Did you do anything to try to stop Dr. Misner from leaving Pocatello Dental?

A. No.

Q. Why not?

A. *For the same reasons I gave you about Dr. Snow*. \* \* \*

A. I was disappointed that he was going to leave.

Q. And the damage to the practice, is that in the form of patients going with him?

A. Yes, and the attractiveness of the Pocatello Dental Group itself. *We became the Pocatello Dental Group, the uniqueness of our office was we had a pediatric dentist, the only one in town. Now we have two and we don't have one in our office.*

Q. And just to summarize, the reasons why you didn't take steps to keep him from leaving were that you thought that *InterDent had done some things that were wrong* and would prevent you from doing anything to stop Dr. Misner from leaving?

A. Yes.

— G. Romriell Depo. 52:19-53:20

\* \* \*

**Though Warned, InterDent Failed to Provide Trained Pediatric Staff**

Q. This is how we got it from Dr. Misner. There is a paragraph in the middle of the page beginning "The subject of *staff training*," do you see that?

A. Yes.

Q. There is a statement in about the middle, *"Inadequate trained staff has come to a crisis state* and will cost the company and doctors tens of thousands of dollars due to *lack of action in providing trained personnel."*

A. Yes.

Q. *Was that true on or about August 14 of 2003?*

A. Yes, I remember that conversation. *That was an ongoing conversation for several months.*

Q. What do you remember about that conversation?

A. I remember *my befuddlement why InterDent would not provide the training and the staff that Dr. Misner needed to produce the dentistry that he was doing.*

— G. Romriell Depo. 66:3-20 (Referencing Exhibit 7, page 2)

\* \* \*

**Training of Replacement Pediatric Staff Refused by InterDent**

Q. So you were never told there was any difficulty in finding trained personnel?

A. There is difficulty finding trained personnel. That was the issue. We knew there was a difficulty finding trained personnel, and they needed to bring in extra personnel and train them before the other people left the office. And he knew nine months ahead of time that a couple of the girls would be leaving. So *there was plenty of lead time to get these people trained, but Kevin Webb would not allow him to bring people in to be trained.* So when those people left, he had no trained people to --

— G. Romriell Depo. 67:18-68:5

\* \* \*

Q. My question is how do you know that *Kevin Webb prevented the hiring of personnel to be trained?*

A. Barbara said that *Kevin and Bruce Call would not allow* them to bring in those people to be trained. *And that's the same reason that Dr. Johnson left,* the same scenario.

Q. When did Barbara say this?

A. Oh, she said it in probably January, February, March, April, May, June, July, August, and September, every month up until those girls left.

Q. Of 2003?

A. Yes.

— G. Romriell Depo. 68:14-25

#### **Untrained and Inadequate Pediatric Staff**

Q. So they decided to alter their schedules and reduce hours?

A. *So they could adequately take care of the patients,* because they had *untrained staff* or not enough staff to take care of them. Dr. Misner was pretty upset about it because it was going to affect his income, but he didn't know what else to do.

Q. So it wasn't that InterDent refused to schedule patients --

A. Yes, it was. *It was because InterDent refused to provide the staff and provide the trained staff so that they could adequately take care of scheduled patients.* It's not just a matter of scheduling patients and running them through the office, *you have to have trained people to take care of them, and they were not available because of the actions of InterDent.*

— G. Romriell Depo. 69:13-70:3



**Without Adequate Pediatric and Orthodontic Staff, Hours Had to Be Reduced**

Q. The Exhibit No. 7 goes on to say, "The Pedit Orth. departments will be altering the patient schedules, and *decreasing the hours of Dr. Bybee due to lack of adequately filled staff positions.*"

Q. Did that occur?

A. Yes.

Q. Now, the pedit department was who?

A. Misner and Bybee.

Q. And the ortho department was --

A. Johnson.

Q. That's short for orthodontist.

A. Yes.

— G. Romriell Depo. 69:1-8

\* \* \*

**No Remaining Capacity To Take Care of Dr. Misner's Pediatric Patients**

Q. Dr. Misner's leaving was going to damage your practice, you knew that, right?

A. No, I didn't think it was going to damage my practice that much, but because I am fairly busy after Dwight had left, I absorbed, because of my name, I absorbed many of his patients, and I am about as busy as I could be. And I really didn't have the capacity, rather than hurting my practice, *I just didn't have the capacity to take care of Dr. Misner's patients.*

Q. So the damage would be to the Pocatello Dental Group practice as a whole, not your own personal practice?

A. No, it wouldn't hurt the Pocatello Dental Group, *it would hurt InterDent. That's why I was surprised that they didn't do something positive to try to keep him there.*

— G. Romriell Depo. 54:14-55:4

\* \* \*

**Drs. Misner & Bybee: The Only Local Dentists Seeing Medicaid-Medicare Children**

Q. Let's talk about family dentists for a moment. Now, it's true, is it not, that Dr. Misner and Dr. Bybee are not the only dentists in Pocatello who see children, right?

A. True. But they are *nearly the only dentists in Pocatello that see the Medicaid-Medicare patients.* Most, *I don't know*

*of another general dentist that sees them, and the other pediatric dentist has refused to see them when we have referred them to his office.*

— **G. Romriell Depo. 23:13-21**

\* \* \*

**Remaining Dentists Not Trained for Pediatric Dental Patients**

A. No, they were all telephone conversations. I apologized for my inability to take care of them. I feel badly for them.

*I'm not trained for those special needs.*

— **G. Romriell Depo. 30:23-25**

\* \* \*

**InterDent Directed that Pediatric Patients Be Referred Out**

A. Yes. In fact when Dr. Misner had resigned from the Pocatello Dental Group, we were *concerned about the emergency service to those patients*. We did not have the capability of working them into our schedule on the basis that they had been coming in. We asked Dr. Misner and Bybee if they would come in on an emergency basis and see these patients. *We made that request of InterDent* and received a rather terse letter back, absolutely not, that they would be -- *all those patients should be referred out* to the dentists in the community. When we referred those children into the community, who had dental emergencies, which means they were in pain, they could not get into another dentist for the most part. So Dr. Bybee made arrangements to go in after hours at his brother's office so that he could take care of those emergency patients and get them out of pain, because they were not able to find all their needs met among the list that you just read.

— **G. Romriell Depo. 28:7-24**

\* \* \*

**Dr. Bybee is Pediatric Specialty Trained**

Q. And Dr. Bybee is a general dentist who sees children?

A. Yes. He has taken many hours of continuing ed classes and studying; he is as *well trained as any pediatric specialist dentist*. The only difference is he has not gone to a specialty school. The fact of the matter is *he is better trained and*

*treats the patients better than the other specialist in Pocatello.* — **G. Romriell Depo. 31:5-12**

\* \* \*

**InterDent Removed Patient Follow-up Capability**

A. If the patient walks in the office, I have access to their chart, and that's all I have. If that patient -- I take care of their emergency. *In the past we have a follow-up system* to follow up with that patient and bring them in as a regular patient, get them into hygiene, diagnose their needs, and take care of them so they didn't have to become an emergency patient again. *With InterDent I don't have that capability. We did have it with GMS, but when InterDent moved the computers to Vancouver, we lost that capability.*

— **G. Romriell Depo. 46:12-21**

\* \* \*

A. *I want to be able to follow-up* with them so that I can take the appropriate care, and *I am being denied that capability.* If I ask for a list of my emergency patients that I had last month, they will not give them to me. There is no way that I can go into the computer, which it was made for, and get that information.

— **G. Romriell Depo. 47:23-48:4**

\* \* \*

**InterDent Not Rescheduling Current Patients**

A. It's called a 2028. We weren't supposed to find out about that list because InterDent had *created this file behind our backs.* We were wondering why certain patients weren't coming in, *patients who were in the midst of orthodontic treatment, in the midst of root canal treatment, in the midst of crown and bridge treatment, every aspect of treatments.* And we found that their appointments were being canceled, they weren't showing up for treatment, they weren't finalizing treatment, and I don't remember how we came to find out about the 2028. *The 2028 means that that patient is put on a list that we do not call for 28 years, and they are not allowed to come in the office for 28 years. That included many of my family and some of my best friends.*

— **G. Romriell Depo. 43:11-25**

\* \* \*

Q. Let me finish the sentence first. Any other reasons why you feel that InterDent is responsible for these patients leaving?

A. I know of and have been given no other reason. I have had *patients* that I have seen at wedding receptions and family gatherings that have come to me and put their arm around me and say, Dr. Romriell, we love you, you are the finest dentist we have ever had, but *we cannot tolerate the way we have been treated by InterDent.*

— G. Romriell Depo. 41:15-24

\* \* \*

#### Refusal To Provide Basic Patient Information

Q. About how many patients did you have last fall?

A. I tried to find that out and *InterDent wouldn't tell me.* I made a request that of the patients that I had, et cetera, and they said they would not give me that information. I requested that information as recently as two days ago, and InterDent, Kevin Webb, *refused to give me that information.*

— G. Romriell Depo. 45:6-13

#### InterDent Has Refused Accounting Information

I have asked for an accounting of new patients, calls and referrals and so forth, and they will not share that information with me.

— G. Romriell Depo. 29:24-30:1

\* \* \*

#### InterDent Refusal to Shared Needed and Readily-Available Information

A. It would just be a guess; I would guess it would be 3,000, 3,500. But that's one of the problems, that *InterDent refuses to share information with us about our practices that we really need to know.* I have asked for *patient lists*; they won't give me patient lists. I have asked for *patient numbers*, relationship of when a patient comes in for an *emergency*, how many we get back to take care of their problems on a more permanent basis. I have no idea.

— G. Romriell Depo. 45:16-24

\* \* \*

A. Yes, but who remembers the name of the patient. And with 10,000 charts to go through, that's an absurd way to find the answer to the problem, when it's in the computer and literally *within seconds they could give me that information.*

— G. Romriell Depo. 46:2-6

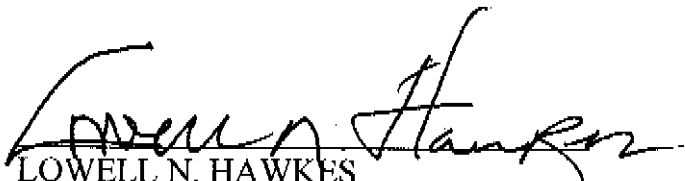
### CONCLUSION

InterDent seeks to profit from its own wrongs, failures, and mistakes. Whether from its own financial mismanagement and bankruptcy or otherwise, the evidence is overwhelming that InterDent consciously elected to *downgrade* the former “preeminent” Pocatello Dental Group practice. It was formerly a multi-specialty elite practice without equal in this community.

But InterDent was looking for a “free ride.” It chose to *not* maintain equipment and forego necessary supplies purchases. It chose to *not* train and replace necessary staff — pediatric and otherwise. It broke promises to new dentists about providing top-notch professional support. It secreted access by the dentists to patient and practice information that historically had always been available to the Pocatello Dental Group professionals. It undertook practices that impaired patient follow-up and ongoing care. The consequences were predictable. The Motion for Temporary Restraining Order should be denied.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of July, 2004.

LOWELL N. HAWKES, CHARTERED

  
LOWELL N. HAWKES

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., )  
an Idaho professional )  
corporation, )

Plaintiff, )

vs. )

Case No. CV-03-450-E-LMB

INTERDENT SERVICE CORPORATION, )  
a Washington corporation, )

Defendant. )

INTERDENT SERVICE CORPORATION, )  
a Washington corporation, )

Third Party Plaintiff. )

vs. )

POCATELLO DENTAL GROUP, P.C., )  
an Idaho professional )  
corporation; DWIGHT G. )  
ROMRIELL, individually; )  
LARRY R. MISNER, JR., )  
individually; PORTER SUTTON, )  
individually; ERNEST SUTTON, )  
individually; GREGORY ROMRIELL )  
individually; ERROL ORMOND, )  
individually; and ARNOLD )  
GOODLIFFE, individually, )

Third Party Defendants. )

COPY

ORAL DEPOSITION OF GREGORY E. ROMRIELL  
Taken on June 25, 2004

Page 2

1 APPEARANCES:

2

3 For the Pocatello Dental Group:

4           RON KERT,  
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15 For Dwight G. Romriell, Gregory Romriell, Errol Ormond  
16 and Arnold Goodjiffe:

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18           Lowell N. Hawkes, Chartered  
19           Attorneys at Law  
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21           Pocatello, Idaho

22 For the Larry R. Misner, Ernest Sutton, and Porter  
23 Sutton:

24           RICHARD A. HEARN  
25           Racine, Olson, Nye,  
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1 BE IT REMEMBERED that on the 25th day of June, 2004,  
2 at the hour of 9:05 a.m. the deposition of GREGORY E.  
3 ROMRIELL, produced as a witness at the instance of the  
4 defendant in the above-entitled action now pending in the  
5 above-named court, was taken before Paul D. Buchanan CSR  
6 #7, and notary public, State of Idaho, in the law offices  
7 of Lowell N. Hawkes, Chartered, 1322 East Center,  
8 Pocatello, Bannock County, Idaho.

9

10 WHEREUPON, the following proceedings were had:

11

12 GREGORY E. ROMRIELL,  
13 called at the instance of the defendant, having been  
14 first duly sworn, was examined and testified as follows:

15 EXAMINATION

16 BY MR. KAPLAN:

17 Q. Could you please state your full name and  
18 spell your last name?

19 A. Gregory E. Romriell, R-O-M-R-I-E-L-L.

20 Q. Have you had your deposition taken before, Dr.  
21 Romriell?

22 A. Yes.

23 Q. How many times?

24 A. Once.

25 Q. What kind of case was that?

Page 5

1 A. It was a dental TMJ liability case.

2 Q. Have you had a chance to meet with your lawyer  
3 and go over some of the deposition procedures?

4 A. Well, he told me to relax and be comfortable.

5 Q. And did you review any documents when you met  
6 with your lawyer?

7 A. No.

8 Q. Why don't I go over some of the rules, then,  
9 with you. Do you understand that you took an oath to  
10 tell the truth today?

11 A. Yes.

12 Q. And what does that oath mean to you?

13 A. It means I tell the truth.

14 Q. And do you understand that your testimony is  
15 subject to penalties of perjury under federal law?

16 A. I didn't know that, but it makes sense.

17 Q. Because this is a case pending in the United  
18 States District Court; do you understand that?

19 A. District court or federal court?

20 Q. Federal court. Do you understand that.

21 A. Yes.

22 Q. And you need to answer audibly, a nod of the  
23 head or an uh-huh or huh-huh doesn't show up on the  
24 transcript --

25 A. Yes or no.

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Page 12

1 Q. How long did you work as a solo practitioner  
2 dentist?

3 A. I was alone for two years and then my brother  
4 joined us.

5 Q. That's Dr. Dwight Romriell?

6 A. Yes, he joined us in '76.

7 Q. And did you practice with Dr. Dwight Romriell,  
8 just the two of you for a period of time?

9 A. Yes, we were together for about eight years,  
10 nine years.

11 Q. Until what year?

12 A. You are asking hard questions now. That would  
13 have been about '84.

14 Q. Then what did you do?

15 A. It was '83. Then we formed the Pocatello  
16 Dental Group.

17 Q. Was it known as the Pocatello Dental Group at  
18 that time?

19 A. Yes.

20 Q. Was that a professional corporation?

21 A. We have been a professional corporation, a  
22 limited liability company, and a partnership, and I don't  
23 remember what we were at that point.

24 Q. Who were the owners or partners in that entity  
25 at the time?

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1 A. There was myself and my brother, Porter  
2 Sutton, Ernie Sutton, Errol Ormond, Jay Goodliffe, Dick  
3 Oyler, Dennis Michaelson, and I think that's all.

4 Q. Did at some point --

5 A. Oh, Doug Akers.

6 Q. Did at some point your business become known  
7 as Idaho Dental Group?

8 A. The Suttons and Michaelson had formed a  
9 corporation that was known as the Idaho Dental Group, and  
10 Porter Sutton had a vision of creating multiple offices  
11 like ours under the umbrella of the Idaho Dental Group.  
12 But we were never known locally as that.

13 Q. So the Pocatello Dental Group was either a  
14 business name of or subsidiary of Idaho Dental Group?

15 A. Yes.

16 Q. Do you know which one, whether it was a doing  
17 business or whether it was a subsidiary?

18 A. I don't.

19 Q. Did at some point other dentists become owners  
20 of the PC?

21 A. No.

22 Q. How long did this business arrangement of  
23 Pocatello Dental Group or Idaho Dental Group last?

24 A. It still exists.

25 Q. Did you engage in a significant business

1 transaction in 1996?

2 A. Yes.

3 Q. Between 1983 and 1996 were there other  
4 business transactions of that magnitude with regard to  
5 your --

6 A. No.

7 Q. And the 1996 transaction, was that the  
8 acquisition of certain of your assets by GMS Dental?

9 A. Yes.

10 Q. And I take it you are a licensed dentist?

11 A. Yes.

12 Q. When did you get your license?

13 A. In 1974.

14 Q. And what states are you licensed in?

15 A. At that time Idaho and Kentucky; now just  
16 Idaho.

17 Q. Are you a certified specialist of any sort?

18 A. No. I am a member of the Academy of General  
19 Dentistry with my fellow and soon to have mastership  
20 award which in the field of general dentistry is the  
21 equivalent of a specialty but not recognized as such.

22 Q. What does it take to get into the Academy of  
23 General Dentistry, for example, do you have to be  
24 nominated by someone or how does that work?

25 A. No, it just takes a desire to be a high

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1 quality dentist, gaining knowledge, remaining on the  
2 forefront of the advances of dentistry, bettering  
3 yourself. They have a high standard of continuing  
4 education classes each year and you have to take them in  
5 certain areas so that you remain knowledgeable in all  
6 aspects of dentistry. They are divided into lecture and  
7 hands-on practical courses.

8 Q. Some questions I need to ask you, Dr.  
9 Romriell. Have you ever been convicted of a felony?

10 A. No.

11 Q. Have you ever been convicted of a misdemeanor  
12 involving dishonesty?

13 A. No, never been charged.

14 Q. Is there any reason, health or otherwise, why  
15 you can't give your full and best testimony here today?

16 A. No.

17 Q. I want to talk for a minute about specialty  
18 areas of dentistry. Let's take an orthodontist, for  
19 example, is that a recognized specialty?

20 A. Yes.

21 Q. And does an orthodontist have to get any sort  
22 of certification to be an orthodontist?

23 A. Just has to graduate from a certified school.

24 Q. And does someone, the state or some regulatory  
25 agency give them some kind of stamp of approval --



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1 A. No.  
2 Q. And, to your knowledge, does Mr. Webb have any  
3 ability to force you to do that?  
4 MR. KERL: I object to the form of the  
5 question to the extent it asks for a legal conclusion.  
6 A. Do what?  
7 Q. Let's just strike the question, we'll start  
8 over.  
9 To your knowledge, does Mr. Webb and InterDent  
10 have the ability to go out themselves and enforce Dr.  
11 Snow's noncompete agreement?  
12 MR. HAWKES: Objection.  
13 MR. KERL: Same objection.  
14 Q. Do you know?  
15 A. I don't.  
16 Q. Do you know whether InterDent is relying on  
17 you, Pocatello Dental Group, to enforce --  
18 MR. KERL: I object to the form of the  
19 question. The deposition is not being taken of Mr.  
20 Romriell in his capacity as an agent for Pocatello Dental  
21 Group. You specifically noticed him up as an individual.  
22 You specifically noticed and wrote a letter to me stating  
23 that he was not being taken as an agent for Pocatello  
24 Dental Group. So I am objecting to the form of the  
25 question and asking him not to answer.

1 Q. Now, this letter, the second sentence, states,  
2 "Pocatello Dental Group (PDG) has an obligation to  
3 enforce dentist noncompete agreements to prevent damage  
4 to the practice."  
5 Do you understand that sentence?  
6 A. Uh-huh. (Witness nods head affirmatively.)  
7 Q. Yes?  
8 A. I understand that sentence.  
9 Q. There is no lack of clarity about what  
10 InterDent expects in that sentence, is there?  
11 A. Yes, there is.  
12 Q. How so?  
13 A. Because of the actions that InterDent has  
14 taken that have been so detrimental to our practice.  
15 Q. Does the actions that you think InterDent has  
16 taken cause you to have some uncertainty about --  
17 A. Absolutely.  
18 Q. Let me finish, please. -- about the sentence  
19 "Pocatello Dental Group (PDG) has an obligation to  
20 enforce dentist noncompete agreements to prevent damage  
21 to the practice"?  
22 A. Yes.  
23 Q. What word in that sentence don't you  
24 understand?  
25 A. The statement of obligation, I think that we

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1 MR. KAPLAN: I am asking his personal  
2 knowledge as an individual, I am not asking him to speak  
3 as the corporate representative most knowledgeable. If  
4 he has knowledge on the subject, he needs to answer.  
5 MR. HAWKES: Scott, let me say this. I  
6 thought the way you phrased the question was  
7 objectionable because you were asking him to speculate as  
8 to the state of mind or authority of power of your  
9 clients, and I think it's objectionable for that reason.  
10 Why don't you restate it and see if we can get around it.  
11 MR. KAPLAN: That's fair.  
12 Q. (By Mr. Kaplan.) Dr. Romriell, do you know  
13 whether InterDent is relying on you as the president of  
14 Pocatello Dental to do anything to enforce Dr. Snow's  
15 noncompete?  
16 MR. HAWKES: Same objection. Calls for the  
17 state of mind of InterDent.  
18 Q. You can answer.  
19 A. I don't have any idea. I have been trying to  
20 figure out for two years what their state of mind is.  
21 Q. I am not asking for InterDent's state of mind,  
22 I am asking your state of mind, and was the answer you  
23 don't know?  
24 A. My state of mind is I don't know what they are  
25 doing or what they expect.

1 had as a dental group an obligation through InterDent to  
2 provide Dr. Snow with the things that we had agreed upon  
3 when he came into the group, and through the actions of  
4 InterDent, the negative actions of InterDent, we were not  
5 able to provide meeting his contract. So the contract  
6 had been violated and he is free to do his choice.  
7 Q. So it's not that you don't understand the word  
8 obligation, you just disagree with it; is that fair?  
9 A. Yes.  
10 Q. And I may have asked this already, but you or  
11 to your knowledge anyone at Pocatello Dental Group have  
12 taken no action in response to this letter?  
13 A. No.  
14 Q. You have taken no action?  
15 A. I have taken no action. Well, excuse me, I  
16 have taken an action, I told Barbara, our office  
17 manager-CPA-bookkeeper, that the second paragraph,  
18 InterDent says that they will take the action if we  
19 choose not to, and I told her that they needed to do what  
20 they were going to do.  
21 (Deposition Exhibit No. 2 marked for  
22 identification.)  
23 Q. Now, Dr. Romriell, your predecessor as  
24 president of Pocatello Dental Group was Dr. Misner,  
25 correct?

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1 family dentistry?  
2 A. Yes.  
3 Q. Do they take Medicare-Medicaid?  
4 A. Bill doesn't. I don't know about Lee.  
5 Q. Are you familiar with Gene Hoge?  
6 A. Yes.  
7 Q. Is he a family dentist?  
8 A. Yes.  
9 Q. Does he take Medicare-Medicaid?  
10 A. No.  
11 Q. Are you familiar with Larry Kemp?  
12 A. Yes.  
13 Q. Is he a family dentist?  
14 A. Yes.  
15 Q. Does he take Medicare-Medicaid?  
16 A. I don't know.  
17 Q. Are you familiar with Kim Smith?  
18 A. Yes.  
19 Q. Is that a he or she?  
20 A. He.  
21 Q. Is he a family dentist?  
22 A. Yes.  
23 Q. Does he take Medicare-Medicaid?  
24 A. I don't know.  
25 Q. Are you familiar with Larry Kemp?

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1 A. You asked that.  
2 Q. I am sorry.  
3 MR. HAWKES: Well, are you still familiar.  
4 Q. Are you still familiar?  
5 A. Yes.  
6 Q. Does he still practice family dentistry?  
7 A. My answer is that Larry will take anybody he  
8 can get in the door.  
9 Q. Are you familiar with an office called  
10 Pocatello Family Dentistry?  
11 A. No.  
12 Q. Is there an office staffed by residents in the  
13 ISU advanced general dentistry program here?  
14 A. It's a residency program for recent graduates.  
15 Q. And do they see children?  
16 A. On rare occasion.  
17 Q. Do they take Medicare-Medicaid?  
18 A. I have no idea.  
19 Q. Are you familiar with Larsen Dental Center?  
20 A. Yes.  
21 Q. And are they family dentists?  
22 A. I'm not sure.  
23 Q. Do they take Medicare-Medicaid?  
24 A. I have no idea.  
25 Q. And our last one is Williams Family Dentistry,

1 are you familiar with that office?  
2 A. Yes.  
3 Q. And do they take Medicare-Medicaid?  
4 A. They may.  
5 Q. Are all the dentists that we just named in the  
6 Pocatello area?  
7 A. Yes. In fact when Dr. Misner had resigned  
8 from the Pocatello Dental Group, we were concerned about  
9 the emergency service to those patients. We did not have  
10 the capability of working them into our schedule on the  
11 basis that they had been coming in. We asked Dr. Misner  
12 and Bybee if they would come in on an emergency basis and  
13 see these patients. We made that request of InterDent  
14 and received a rather terse letter back, absolutely not,  
15 that they would be -- all those patients should be  
16 referred out to the dentists in the community.  
17 When we referred those children into the  
18 community, who had dental emergencies, which means they  
19 were in pain, they could not get into another dentist for  
20 the most part. So Dr. Bybee made arrangements to go in  
21 after hours at his brother's office so that he could take  
22 care of those emergency patients and get them out of  
23 pain, because they were not able to find all their needs  
24 met among the list that you just read.  
25 Q. Let me ask you a few questions about what you

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1 just said.  
2 Did your request that Drs. Misner and Bybee  
3 see emergency patients at Pocatello Dental, was that made  
4 in writing?  
5 A. Yes. The answer was in writing, too.  
6 Q. And was it a letter of some sort?  
7 A. It was to Dr. Aaron.  
8 Q. You got a letter from Dr. Aaron back. Did you  
9 communicate to InterDent in a letter as well?  
10 A. In response to their letter when they told me  
11 no?  
12 Q. No, requesting that Drs. Misner and Bybee see  
13 emergencies patients.  
14 A. Yes.  
15 Q. Do you recall when this occurred?  
16 A. March -- February.  
17 Q. And how many patients has it been that have  
18 been unable to get in to see another dentist, do you have  
19 an estimate?  
20 A. It could be 22 million, I have no idea.  
21 That's an absurd number but I have no idea. We have  
22 multiple receptionists taking the calls and that's some  
23 of the information that InterDent refuses to give to me.  
24 I have asked for an accounting of new patients, calls and  
25 referrals and so forth, and they will not share that

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1 Q. He is still there.  
2 A. Yes.  
3 Q. And for two years after he left Pocatello  
4 Dental, did he practice at all in Pocatello?  
5 A. I have no idea. I only referred one  
6 orthodontist in the group, and at that time it was Dr.  
7 Johnson.  
8 Q. Prior to the GMS Dental acquisition, you did  
9 in fact have noncompete agreements in your employment  
10 contracts, correct?  
11 A. I think we did.  
12 Q. And in fact those noncompete agreements had a  
13 20-mile and two-year limitation, right?  
14 A. Yes, they may have.  
15 Q. That's your best recollection?  
16 A. Yes. It's been 20 years since we wrote that.  
17 Q. So your best recollection is that the 20-mile  
18 and two-year limitation is not something that GMS Dental  
19 came up with, it's something that you had already been  
20 using, correct?  
21 A. Well, yeah, maybe.  
22 Q. Your best recollection?  
23 A. Best recollection.  
24 Q. Who are the current shareholders in Pocatello  
25 Dental Group?

1 shareholder at one point?  
2 A. Yes.  
3 Q. Is he no longer a shareholder?  
4 A. Right.  
5 Q. What happened to his shares?  
6 A. They were given to members of the crew.  
7 Q. Same arrangement?  
8 A. Same arrangement. Dr. Porter Sutton was the  
9 founder of the Pocatello Dental Group.  
10 Q. And he was the president of the group for a  
11 long period of time?  
12 A. Many years.  
13 Q. He was the president of the group at the time  
14 of the GMS Dental acquisition?  
15 A. Yes.  
16 Q. And did he serve as president for a number of  
17 years after that?  
18 A. Yes.  
19 Q. When did he stop serving as president?  
20 A. I couldn't tell you.  
21 Q. Did Dr. Misner take over after him?  
22 A. I don't remember who the next president was.  
23 Q. Dr. Misner was the president prior to you?  
24 A. Yes.  
25 Q. And do you recall how long he had been

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1 A. Myself, Dwight Romriell, Jay Goodliffe, Errol  
2 Ormond.  
3 Q. Dr. Misner was a --  
4 A. Let's see, and Russ Misner, five of us.  
5 Q. Dr. Misner is still a shareholder?  
6 A. Yes.  
7 Q. Has Dr. Bybee ever been a shareholder?  
8 A. No.  
9 Q. Is Dr. Earnest Sutton a shareholder?  
10 A. No.  
11 Q. Is he an employee of yours?  
12 A. Yes.  
13 Q. Has he ever been a shareholder?  
14 A. Yes.  
15 Q. What happened to his shares?  
16 A. He resigned from the PC.  
17 Q. And did he sell his shares to anybody or what  
18 happened?  
19 A. He just gave them back to the rest of us.  
20 Q. And do you as individuals own his shares or  
21 does the company own them?  
22 A. Individuals.  
23 Q. How are they divided up?  
24 A. Evenly.  
25 Q. And Dr. David Porter Sutton, was he a

1 president?  
2 A. No, just not long enough.  
3 Q. Now, how is it that you came to be president  
4 in place of Dr. Misner?  
5 A. He was about ready to have a nervous  
6 breakdown, his blood pressure was out of control, and the  
7 doctor told him he needed to get out of the position.  
8 Our employer was creating -- not our employer, but  
9 InterDent was creating a lot of stresses in his life.  
10 Q. So in order to reduce Dr. Misner's stress, you  
11 took over, is that right?  
12 A. Yes.  
13 Q. And --  
14 A. With friendly coercion.  
15 Q. When did that happen?  
16 A. I'm not even sure of the date.  
17 Q. Was it in 2003 or 2004?  
18 A. It was at the end of 2003 or the beginning of  
19 2004. I'd have to go back and look at the records.  
20 MR. KAPLAN: Let's have this marked.  
21 (Deposition Exhibit No. 3 marked for  
22 identification.)  
23 Q. Do you recognize Exhibit No. 3, Dr. Romriell?  
24 A. I think I have seen this before.  
25 Q. Are these the bylaws of the Pocatello Dental

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1 A. I can give you a very specific example.  
2 Q. Sure.  
3 A. My own son. It's traditional in dentistry and  
4 has been since the inception of the Pocatello Dental  
5 Group, including GMS and InterDent, that we do our family  
6 dentistry for free, our families in dentistry. I had  
7 treated my son and his wife. She worked for Albertson's  
8 as a meat cutter, had insurance. We submitted their  
9 claims for their insurance, which they were entitled to,  
10 and then I gave instructions to write off the balance,  
11 what InterDent terms as charity dentistry.  
12 They wouldn't write it off. He was called by  
13 a lady from InterDent in Vancouver, who identified  
14 herself as calling for Dr. Greg Romriell at the Pocatello  
15 Dental Group. I have no idea who the lady was. And she  
16 wanted to know when Matt was going to pay his bill. So  
17 he explained to her what our arrangement was, that he was  
18 my son. She says, That's fine. When are you going to  
19 send a check? He explained that three times, and she  
20 came back with the same response. And Matthew said, Dad,  
21 if you weren't my father, I would be in another dental  
22 office, that lady treated me so rudely.  
23 Q. Now, other than your son, can you give me an  
24 estimate of how many patients were upset that InterDent  
25 wanted them to pay their bills?

1 Q. What makes you think that there is this  
2 28-year rule?  
3 A. Because that's what they stated it meant.  
4 Q. Who did?  
5 A. That's what 2028 means.  
6 Q. Who stated that?  
7 A. This is where you put deadbeat patients.  
8 Q. Who stated that?  
9 A. InterDent.  
10 Q. Do you recall who?  
11 A. No.  
12 Q. We are straying a little from the subject of  
13 this deposition --  
14 A. No, actually that's what it's all about, is  
15 the poor treatment of our patients.  
16 Q. What we are here about today, and I am going  
17 to try to limit it to this, is Dr. Misner's noncompetence --  
18 A. You asked me earlier about that, and that's  
19 the reason that I can't enforce a noncompetence, because  
20 they were devastating our practice.  
21 Q. This -- is it 278?  
22 A. 287.  
23 Q. Out of about how many patients did you have  
24 when you compiled this list?  
25 MR. KERL: I object to the form of the

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1 A. I have a list of 287 that InterDent prohibited  
2 from coming into the office. And it was not because they  
3 weren't paying their bills, most of them were paying.  
4 The problem was that they weren't paying enough fast  
5 enough. If they were paying \$50 a month, they wanted  
6 them to pay 100.  
7 Q. How did you put that list together?  
8 A. InterDent did that for us.  
9 Q. Is that list called an InterDent Form  
10 something or what's it called?  
11 A. It's called a 2028. We weren't supposed to  
12 find out about that list because InterDent had created  
13 this file behind our backs. We were wondering why  
14 certain patients weren't coming in, patients who were in  
15 the midst of orthodontic treatment, in the midst of root  
16 canal treatment, in the midst of crown and bridge  
17 treatment, every aspect of treatments.  
18 And we found that their appointments were  
19 being canceled, they weren't showing up for treatment,  
20 they weren't finalizing treatment, and I don't remember  
21 how we came to find out about the 2028. The 2028 means  
22 that that patient is put on a list that we do not call  
23 for 28 years, and they are not allowed to come in the  
24 office for 28 years. That included many of my family and  
25 some of my best friends.

1 question. He did not compile the list. I think his  
2 testimony is different.  
3 Q. When you obtained this 287 figure, when was  
4 that?  
5 A. It was sometime last fall.  
6 Q. About how many patients did you have last  
7 fall?  
8 A. I tried to find that out and InterDent  
9 wouldn't tell me. I made a request that of the patients  
10 that I had, et cetera, and they said they would not give  
11 me that information. I requested that information as  
12 recently as two days ago, and InterDent, Kevin Webb,  
13 refused to give me that information.  
14 Q. Do you have an estimate, are we talking  
15 10,000, 5,000?  
16 A. It would just be a guess; I would guess it  
17 would be 3,000, 3,500. But that's one of the problems,  
18 that InterDent refuses to share information with us about  
19 our practices that we really need to know. I have asked  
20 for patient lists; they won't give me patient lists. I  
21 have asked for patient numbers, relationship of when a  
22 patient comes in for an emergency, how many we get back  
23 to take care of their problems on a more permanent basis.  
24 I have no idea.  
25 Q. You do have access to patient charts and other

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1 A. No.  
2 Q. Is there a secretary?  
3 A. Yes.  
4 Q. Who is that?  
5 A. Dr. Ormond.  
6 Q. Is there a treasurer?  
7 A. He is the secretary-treasurer.  
8 MR. KAPLAN: Let's take a short break.  
9 (Short recess.)  
10 Q. Dr. Romriell, you have been practicing in  
11 Pocatello for approximately 30 years now; is that right?  
12 A. Yes, 29.  
13 Q. And are you familiar with the community of  
14 dental practitioners here?  
15 A. Yes.  
16 Q. Are you involved in any local dentistry  
17 organizations?  
18 A. Yes.  
19 Q. What are those?  
20 A. The free neighborhood clinic, indigent, take  
21 care of patients here in Pocatello.  
22 Q. Is there something like a Pocatello dental  
23 association --  
24 A. Oh, societies, yes, there is a Southeast Idaho  
25 Dental Society. I was the founder of that organization.

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1 I was several times the president of the Pocatello Dental  
2 Society. I was the president of the Upper Snake River  
3 Dental Society.  
4 Q. In the break did you have a chance to review  
5 my copy of the Yellow Pages --  
6 A. There is not all the pages there. I didn't  
7 see it.  
8 Q. It didn't help you recollect the name of the  
9 new guy?  
10 A. No.  
11 Q. When did Dr. Misner leave Pocatello Dental  
12 Group?  
13 A. I don't remember if it was March or April;  
14 this spring.  
15 Q. Before he left did he provide some sort of  
16 written notice?  
17 A. Yes.  
18 Q. Who did he provide that notice to?  
19 A. To me.  
20 Q. Was it in a letter?  
21 A. Yes.  
22 Q. Do you still have a copy of it?  
23 A. I gave the letter to Barbara. I think I have  
24 a copy of it.  
25 Q. Now, does Pocatello Dental Group itself have

1 files somewhere?  
2 A. Lots of files.  
3 Q. Where are those files located?  
4 A. I really don't know. There are some at the  
5 Pocatello Dental Group; there is storage somewhere in  
6 town that they have files.  
7 Q. Was it Dr. Porter Sutton who took  
8 responsibility at some point for putting things in  
9 storage, or who did?  
10 A. No, Barbara.  
11 Q. Where are the Pocatello Dental Group corporate  
12 records kept?  
13 A. I guess they are in the file that Russ gave  
14 me.  
15 Q. So Dr. Misner gave you a file when you took  
16 over?  
17 A. Yes. I would expect that's where they would  
18 be.  
19 Q. Did you do anything to try to stop Dr. Misner  
20 from leaving Pocatello Dental?  
21 A. No.  
22 Q. Why not?  
23 A. For the same reasons I gave you about Dr.  
24 Snow.  
25 Q. Did you have a concern that Dr. Misner leaving

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1 was going to hurt your practice?  
2 A. Yes.  
3 Q. And did you attempt to quantify the damage to  
4 the practice that his leaving was going to do?  
5 A. No.  
6 Q. And your concern about --  
7 A. I was disappointed that he was going to leave.  
8 Q. And the damage to the practice, is that in the  
9 form of patients going with him?  
10 A. Yes, and the attractiveness of the Pocatello  
11 Dental Group itself. We became the Pocatello Dental  
12 Group, the uniqueness of our office was we had a  
13 pediatric dentist, the only one in town. Now we have two  
14 and we don't have one in our office.  
15 Q. And just to summarize, the reasons why you  
16 didn't take steps to keep him from leaving were that you  
17 thought that InterDent had done some things that were  
18 wrong and would prevent you from doing anything to stop  
19 Dr. Misner from leaving?  
20 A. Yes.  
21 Q. Now, did you seek legal advice on that subject  
22 or is that something that you came up with on your own?  
23 A. I talked with Ron Kerl, the PC's attorney.  
24 Q. And so because of that, despite the damage to  
25 your practice, you took no steps to enforce Dr. Misner's

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1 A. Is this missing a page or is it just not  
2 signed? Who wrote the letter?  
3 Q. This is how we got it from Dr. Misner.  
4 There is a paragraph in the middle of the page  
5 beginning "The subject of staff training," do you see  
6 that?  
7 A. Yes.  
8 Q. There is a statement in about the middle,  
9 "Inadequate trained staff has come to a crisis state and  
10 will cost the company and doctors tens of thousands of  
11 dollars due to lack of action in providing trained  
12 personnel."  
13 A. Yes.  
14 Q. Was that true on or about August 14 of 2003?  
15 A. Yes, I remember that conversation. That was  
16 an ongoing conversation for several months.  
17 Q. What do you remember about that conversation?  
18 A. I remember my befuddlement why InterDent would  
19 not provide the training and the staff that Dr. Misner  
20 needed to produce the dentistry that he was doing.  
21 Q. Did it ever come to your attention that Dr.  
22 Misner had trouble with staff retention?  
23 A. No, no.  
24 Q. How about Dr. Bybee, has he had trouble with  
25 staff retention?

1 couple of the girls would be leaving. So there was  
2 plenty of lead time to get these people trained, but  
3 Kevin Webb would not allow him to bring people in to be  
4 trained. So when those people left, he had no trained  
5 people to --  
6 Q. Why is it that you believe that Kevin Webb  
7 would not allow people to be brought in to be trained?  
8 A. It was just the money-grubbing, blood-sucking  
9 action that they continually do. For them that's what it  
10 all drops down to. They would have had to bring another  
11 staff member on and pay them salary and they didn't want  
12 to pay a salary for two people. They wanted to pay one  
13 salary.  
14 Q. My question is how do you know that Kevin Webb  
15 prevented the hiring of personnel to be trained?  
16 A. Barbara said that Kevin and Bruce Call would  
17 not allow them to bring in those people to be trained.  
18 And that's the same reason that Dr. Johnson left, the  
19 same scenario.  
20 Q. When did Barbara say this?  
21 A. Oh, she said it in probably January, February,  
22 March, April, May, June, July, August, and September,  
23 every month up until those girls left.  
24 Q. Of 2003?  
25 A. Yes.

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1 A. No.  
2 Q. Has it come to your attention that --  
3 A. It didn't come to my attention because it was  
4 never an issue. They had staff that had been with them  
5 for 20 years.  
6 Q. And did they have other staff that was with  
7 them for much shorter periods of time?  
8 A. Yes. They usually left because of better  
9 wages at another dental office, or they were pregnant.  
10 Q. Did it ever come to your attention that the  
11 office management was having difficulty in finding  
12 trained personnel to fill the positions of those who had  
13 left?  
14 A. No. We were told that they could not have the  
15 staff that they requested. When they requested them,  
16 that they wouldn't hire the staff they wanted until the  
17 people actually left the office.  
18 Q. So you were never told there was any  
19 difficulty in finding trained personnel?  
20 A. There is difficulty finding trained personnel.  
21 That was the issue. We knew there was a difficulty  
22 finding trained personnel, and they needed to bring in  
23 extra personnel and train them before the other people  
24 left the office.  
25 And he knew nine months ahead of time that a

1 Q. The Exhibit No. 7 goes on to say, "The Pcd  
2 and Orth. departments will be altering the patient  
3 schedules, and decreasing the hours of Dr. Bybee due to  
4 lack of adequately filled staff positions."  
5 Did that occur?  
6 A. Yes.  
7 Q. Now, the pedo department was who?  
8 A. Misner and Bybee.  
9 Q. And the ortho department was --  
10 A. Johnson.  
11 Q. That's short for orthodontist.  
12 A. Yes.  
13 Q. So they decided to alter their schedules and  
14 reduce hours?  
15 A. So they could adequately take care of the  
16 patients, because they had untrained staff or not enough  
17 staff to take care of them. Dr. Misner was pretty upset  
18 about it because it was going to affect his income, but  
19 he didn't know what else to do.  
20 Q. So it wasn't that InterDent refused to  
21 schedule patients --  
22 A. Yes, it was. It was because InterDent refused  
23 to provide the staff and provide the trained staff so  
24 that they could adequately take care of scheduled  
25 patients. It's not just a matter of scheduling patients

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1 Q. Does 716 Yellowstone sound right?  
2 A. It's in that neighborhood, yes. I think it's  
3 called Kidds Dental.  
4 (Deposition Exhibit No. 4 marked for  
5 identification.)  
6 Q. Let me explain to you, Dr. Romriell, what  
7 Exhibit No. 4 is. Exhibit No. 4 is a document in which  
8 we have redacted names of patients because there is not a  
9 protective order entered in this case. But they are  
10 documents entitled Request for the release of dental  
11 records. Have you seen these before?  
12 A. Never have.  
13 Q. In the course of your work at Pocatello Dental  
14 Group have you become aware that patients are requesting  
15 records to be transferred to Dr. Misner or Dr. Bybee at  
16 Kidds Dental?  
17 A. Yes. Is Kidds spelled with two D's like that?  
18 Q. It looks like Dr. Misner spells it that way.  
19 Do you know how long that's been going on, that record  
20 transfers have been going on to Dr. Misner and Bybee in  
21 Pocatello?  
22 MR. HAWKES: Objection. You haven't  
23 established that he knows anything about these documents.  
24 A. I have never seen these.  
25 Q. Without reference to the documents, do you

1 Q. And are you aware that patient records have  
2 also been transferred to Dr. Misner's practice in Burley?  
3 A. No.  
4 Q. Do you know, does Dr. Bybee also practice in  
5 Burley or does he limit his practice to Pocatello?  
6 A. I do not know.  
7 (Deposition Exhibit No. 5 marked for  
8 identification.)  
9 Q. Have you seen what we have marked as Exhibit  
10 No. 5 before?  
11 A. I'm not sure.  
12 Q. Do you have an understanding about what  
13 patients on No Recall List means?  
14 A. That's probably the 2028 list.  
15 Q. Have you ever seen a calculation of lost  
16 revenue from patients on No Recall List?  
17 A. I don't remember seeing it.  
18 Q. So is it fair to say this document, you have  
19 no recollection of this document?  
20 A. I don't remember this one specifically. Where  
21 did it come from?  
22 Q. I believe it came from something that  
23 Pocatello Dental Group filed, but if you don't remember,  
24 you don't remember.  
25 A. I wonder where they come up with the 37

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1 know how long --  
2 A. No.  
3 Q. Let me finish so we are clear for the record.  
4 -- how long record transfers have been made to Drs.  
5 Misner and Bybee at their office in Pocatello?  
6 A. No.  
7 Q. Does Dr. Misner also have an office in Burley?  
8 A. Yes, the same office as Dr. Michaelson.  
9 Q. And when Dr. Misner left Pocatello Dental, did  
10 he initially go to practice at that office in Burley?  
11 A. I think he was seeing patients before that.  
12 Q. In Burley?  
13 A. In Burley.  
14 Q. While he was still employed by Pocatello  
15 Dental?  
16 A. Yes.  
17 Q. Do you know how long that had been going on?  
18 A. I don't.  
19 Q. Do you have a sense of --  
20 A. And I am not even certain about that; that's  
21 just an impression that I have, because I never have  
22 talked to him about the Burley situation.  
23 Q. Do you know if Dr. Misner physically practices  
24 at the Kidds dental office in Pocatello?  
25 A. I have never seen him there.

1 percent down there at the bottom.  
2 (Deposition Exhibit No. 6 marked for  
3 identification.)  
4 Q. Dr. Romriell, have you seen what we have  
5 marked as Exhibit No. 6 before?  
6 A. No.  
7 Q. You are aware, though, that Dr. Misner had a  
8 written employment agreement with Pocatello Dental Group?  
9 A. Yes.  
10 Q. Do you know the term of that agreement?  
11 A. I do not.  
12 Q. Do you recall the term of your agreement?  
13 A. I recall it was about ten years.  
14 Q. Do you know if Dr. Misner had a different term  
15 of agreement?  
16 A. I don't.  
17 Q. Now, your brother, Dr. Dwight Romriell, did  
18 have a different term, correct?  
19 A. Yes, he had seven years.  
20 Q. Why was his term different?  
21 A. He didn't have as much faith in GMS as what I  
22 had. And that's supposition.  
23 Q. Now, turn to Page 3 of Exhibit No. 6, under  
24 Section 2.1, Hours. In the middle of the paragraph it  
25 states, "In general, provider is expected to work for

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1 A. Is this missing a page or is it just not  
2 signed? Who wrote the letter?

3 Q. This is how we got it from Dr. Misner.

4 There is a paragraph in the middle of the page  
5 beginning "The subject of staff training," do you see  
6 that?

7 A. Yes.

8 Q. There is a statement in about the middle,  
9 "Inadequate trained staff has come to a crisis state and  
10 will cost the company and doctors tens of thousands of  
11 dollars due to lack of action in providing trained  
12 personnel."

13 A. Yes.

14 Q. Was that true on or about August 14 of 2003?

15 A. Yes, I remember that conversation. That was  
16 an ongoing conversation for several months.

17 Q. What do you remember about that conversation?

18 A. I remember my befuddlement why InterDent would  
19 not provide the training and the staff that Dr. Misner  
20 needed to produce the dentistry that he was doing.

21 Q. Did it ever come to your attention that Dr.  
22 Misner had trouble with staff retention?

23 A. No, no.

24 Q. How about Dr. Bybee, has he had trouble with  
25 staff retention?

1 couple of the girls would be leaving. So there was  
2 plenty of lead time to get these people trained, but  
3 Kevin Webb would not allow him to bring people in to be  
4 trained. So when those people left, he had no trained  
5 people to --

6 Q. Why is it that you believe that Kevin Webb  
7 would not allow people to be brought in to be trained?

8 A. It was just the money-grubbing, blood-sucking  
9 action that they continually do. For them that's what it  
10 all drops down to. They would have had to bring another  
11 staff member on and pay them salary and they didn't want  
12 to pay a salary for two people. They wanted to pay one  
13 salary.

14 Q. My question is how do you know that Kevin Webb  
15 prevented the hiring of personnel to be trained?

16 A. Barbara said that Kevin and Bruce Call would  
17 not allow them to bring in those people to be trained.  
18 And that's the same reason that Dr. Johnson left, the  
19 same scenario.

20 Q. When did Barbara say this?

21 A. Oh, she said it in probably January, February,  
22 March, April, May, June, July, August, and September,  
23 every month up until those girls left.

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25 A. Yes.

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Page 69

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4 never an issue. They had staff that had been with them  
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7 them for much shorter periods of time?

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9 wages at another dental office, or they were pregnant.

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11 office management was having difficulty in finding  
12 trained personnel to fill the positions of those who had  
13 left?

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15 staff that they requested. When they requested them,  
16 that they wouldn't hire the staff they wanted until the  
17 people actually left the office.

18 Q. So you were never told there was any  
19 difficulty in finding trained personnel?

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21 That was the issue. We knew there was a difficulty  
22 finding trained personnel, and they needed to bring in  
23 extra personnel and train them before the other people  
24 left the office.

25 And he knew nine months ahead of time that a

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2 and Orth. departments will be altering the patient  
3 schedules, and decreasing the hours of Dr. Bybee due to  
4 lack of adequately filled staff positions."

5 Did that occur?

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11 Q. That's short for orthodontist.

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14 reduce hours?

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16 patients, because they had untrained staff or not enough  
17 staff to take care of them. Dr. Misner was pretty upset  
18 about it because it was going to affect his income, but  
19 he didn't know what else to do.

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21 schedule patients --

22 A. Yes, it was. It was because InterDent refused  
23 to provide the staff and provide the trained staff so  
24 that they could adequately take care of scheduled  
25 patients. It's not just a matter of scheduling patients



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1 Q. And it's a long paragraph, but could you just  
2 confirm that about two thirds of the way down the  
3 paragraph there is the twenty-mile noncompete area that  
4 we have seen in some of the other agreements?

5 A. It does say that.

6 Q. And if we look at Section 1 under Term, is the  
7 term of that obligation three years from the effective  
8 time or two years from the date of termination of the  
9 member's employment with the group?

10 A. Yes.

11 Q. On Page 5, do you recognize Dr. David Porter  
12 Sutton's signature?

13 A. Yes.

14 Q. When Dr. David Porter Sutton left Pocatello  
15 Dental Group, he in fact went to practice more than 20  
16 miles outside of the radius of your current office?

17 A. Yes.

18 Q. So he complied with this agreement, correct?

19 A. Yes.

20 (Deposition Exhibit No. 10 marked for  
21 identification.)

22 Q. Now, No. 10 is a Dentist's Employment  
23 Agreement in a form similar to what we have seen before.

24 A. Yes.

25 Q. And on Page 13 do you recognize Dr. David

1 Pocatello Dental Group?

2 A. I don't plan on being there forever.

3 Q. Do you have a specific date at which you  
4 intend to leave?

5 A. No.

6 Q. Do you have any intention right now when you  
7 do leave of complying with this provision?

8 MR. HAWKES: I object to the question as  
9 asking the witness to speculate on what conditions may be  
10 at some date in the future.

11 MR. KERL: Join in the objection.

12 MR. HAWKES: You don't have to answer that.

13 Q. If you have an intention, you need to tell me,  
14 because that's not a grounds to instruct a witness not to  
15 answer if you don't have an intention.

16 A. I don't have an intention.

17 (Deposition Exhibit No. 12 marked for  
18 identification.)

19 Q. Dr. Romriell, is Exhibit No. 12 a noncompete  
20 agreement you signed with GMS Dental Group Management,  
21 Inc.?

22 A. Yes, it is.

23 Q. And in Page 2, Section 2, does that have the  
24 two-year and twenty-mile noncompete?

25 A. Yes, it's like the others.

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1 Porter Sutton's signature?

2 A. Yes.

3 Q. There is an Article IX in the agreement  
4 beginning on Page 7, Proprietary Information; Non  
5 Solicitation; Non-competition. And it goes on to Page 8,  
6 and if you look at the last paragraph on Page 8, could  
7 you let me know if this has the two-year and twenty-mile  
8 noncompete that we have seen in some of the other  
9 documents?

10 A. Yes.

11 Q. And Dr. David Porter Sutton has complied with  
12 that, correct?

13 A. Yes.

14 (Deposition Exhibit No. 11 marked for  
15 identification.)

16 Q. Dr. Romriell, do you recognize what we have  
17 marked as Exhibit No. 11?

18 A. I have seen this one before.

19 Q. And is this your Dentist's Employment  
20 Agreement with Idaho Dental Group, PA?

21 A. Yes.

22 Q. And if we look at Page 8, does this have the  
23 same two-year noncompete?

24 A. Yes.

25 Q. Do you have any current intentions of leaving

1 Q. Now let's take a look at a document that might  
2 not be like the others in all respects.

3 (Deposition Exhibit No. 13 marked for  
4 identification.)

5 Q. Have you seen what we have marked as Exhibit  
6 No. 13 before?

7 A. Yes.

8 Q. And what is Exhibit No. 13?

9 A. It's a Dentist's Employment Agreement.

10 Q. Was this a document that was put together on  
11 behalf of Pocatello Dental Group with your brother, Dr.  
12 Dwight Romriell?

13 A. Yes.

14 Q. Now, let's compare this agreement, Exhibit  
15 No. 13, with your Exhibit No. 11, please. If we start  
16 off on the second page of both agreements, there is a  
17 Section 1.1 entitled Employment, correct?

18 A. Yes.

19 Q. And 1.2, entitled Outline of Provider's  
20 Duties.

21 A. Yes.

22 Q. You don't need to go through all of them, but  
23 if you look on Page 3 of Exhibit No. 13 and Page 2 of  
24 Exhibit No. 11, there is a 1.3, Rights and Duties of  
25 Group; is that right?

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1 Q. When did the insufficient staff start?  
2 A. In September. And it continued from that  
3 point.  
4 Q. On Page 6 near the top third, there is a  
5 statement, "Since October 3, 2003, Drs. Dwight Romriell,  
6 Greg Romriell, and L. R. Misner have requested patient  
7 lists, patient flow records and/or production information  
8 from ISC."  
9 A. Yes.  
10 Q. Is that a true statement?  
11 A. Yes.  
12 Q. And about another third of the way down there  
13 is a statement, "Since October 3, 2003, Drs. Dwight  
14 Romriell, Larry Bybee, and L. R. Misner have left the  
15 practice". Is that true?  
16 A. Yes.  
17 Q. Now, as president of Pocatello Dental Group  
18 would it not cause you some concern to give dentists such  
19 as Drs. Dwight Romriell, Larry Bybee, and L. R. Misner  
20 patient lists, patient records, who are leaving the  
21 practice?  
22 A. No.  
23 Q. Why not?  
24 A. Because each of them practice in an area that  
25 I am not trained to practice in. They are doing me a

1 A. I don't. Actually it was my advice to  
2 InterDent and to Barbara Henderson that they take all the  
3 pediatric charts and give them to them since they are the  
4 doctors of record. And ultimately the patient leaves and  
5 goes -- if they were to practice here, that they would  
6 have been duplicating charts at unnecessary expense to  
7 InterDent to have somebody copying x-rays, copying  
8 charts. They are the doctor of record and really are the  
9 caretakers of those charts, not the Pocatello Dental  
10 Group.  
11 Q. Let me ask you whether you know, is it  
12 Pocatello Dental Group, in your understanding, who  
13 actually owns those records?  
14 MR. HAWKES: Calls for a legal conclusion. I  
15 object to it. You don't have to answer that.  
16 MR. KAPLAN: I am just asking for a  
17 understanding.  
18 MR. HAWKES: You can ask his opinion.  
19 Q. Do you have an opinion or understanding?  
20 A. Yes. My opinion is that InterDent -- not  
21 InterDent, that Pocatello Dental Group does not own the  
22 charts, but the patient owns the charts, and that the  
23 doctor that is treating them is the caretaker of those  
24 charts for them.  
25 Q. So the individual doctor --

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1 favor by taking those patients.  
2 Q. So it won't impact --  
3 A. I am not qualified in any way, shape, or form  
4 to represent myself as being able to treat their  
5 patients.  
6 Q. So it won't impact your personal practice.  
7 A. Nor is any other doctor in the Pocatello  
8 Dental Group.  
9 Q. So that these patient lists, you would assume,  
10 would be of patients who were going to leave Pocatello  
11 Dental Group with these doctors; is that right?  
12 A. For their specialty care, yes.  
13 Q. Now, let me ask you about Dr. Dwight Romriell,  
14 you said that when he left, you took some of his  
15 patients?  
16 A. I took none of his patients. His patients  
17 requested me.  
18 Q. So were some of his patients general dentistry  
19 patients, then?  
20 A. Yes.  
21 Q. Does he see general dentistry patients now?  
22 A. No, none, zero.  
23 Q. Do you know if Drs. Misner or Bybee copied any  
24 patient charts or records before they left Pocatello  
25 Dental Group?

1 A. I don't know if that's right or not, but  
2 that's my understanding.  
3 Q. In your opinion the individual doctor, then,  
4 doesn't own the charts.  
5 A. No, the patient does.  
6 Q. Now, while we are on these interrogatories, on  
7 Page 9, about the middle of the page, there is a  
8 discussion about Dr. Misner having a claim in excess of  
9 \$100,000.  
10 A. Yes.  
11 Q. What's the nature of that claim, what's that  
12 about?  
13 A. I'm not sure. It's just what he said.  
14 Q. And it also says Dr. Bybee's claim is in the  
15 approximate amount of \$100,000. Do you know why Dr.  
16 Bybee is claiming \$100,000?  
17 A. I am not sure where he came up with those  
18 numbers.  
19 Q. Do you know what their complaints against  
20 Pocatello Dental Group are?  
21 A. Yes.  
22 Q. What are they?  
23 A. The inability to provide trained staff; the  
24 inability to provide functioning equipment; the inability  
25 to provide adequate supplies and materials; the inability

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1 responsibility.

2 Q. So it's fair to say you don't want to put more

3 money into the company?

4 A. I don't want to put more money, I don't have

5 the money.

6 Q. You don't have the \$96,000 that Dr. Bybee is

7 demanding?

8 A. No. We have it in accounts receivable, which

9 InterDent says belongs to the doctors, but they have the

10 access to the checking account that those moneys come

11 into. We do not have any access to that.

12 Q. You are talking about the accounts receivables

13 that were assigned to InterDent and the GMS Dental

14 transaction?

15 A. No, they were not assigned. In the bankruptcy

16 court InterDent stated that they belonged to the

17 Pocatello Dental Group.

18 Q. I guess we will have to agree to disagree

19 about that for the time being.

20 A. That's the only way that they got away with

21 it.

22 Q. The fact is that you are not paying Dr. Bybee

23 \$96,000, right?

24 A. We are not paying him anything.

25 (Deposition Exhibit No. 17 marked for

Page 91

1 identification.)

2 Q. Have you seen Exhibit No. 17 before, Dr.

3 Romriell?

4 A. Yes.

5 Q. And is this a letter from Mr. Hearn, counsel

6 for Dr. Misner, to the lawyer for Pocatello Dental Group?

7 A. Yes, it is.

8 Q. On the second page of this letter there is a

9 discussion of a breach of contract claim for unpaid

10 bonus in excess of \$100,000.

11 A. Where is this?

12 Q. The second page (indicating). Does this

13 letter refresh your recollection at all about where Dr.

14 Misner came up with this \$100,000?

15 A. That's probably where he came up with it. But

16 I still don't know where he came up with the \$100,000.

17 Q. Does Pocatello Dental Group intend to pay Dr.

18 Misner \$100,000?

19 A. Only with InterDent's cooperation.

20 Q. If InterDent doesn't intend to pay Dr. Misner

21 100,000, does Pocatello Dental Group?

22 A. The Pocatello Dental Group has no income of

23 their own. The fiduciary for the Pocatello Dental Group

24 is InterDent. They control the purse, they control the

25 bank account, they control the patients' account

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1 receivable.

2 MR. KAPLAN: I move to strike all of that

3 answer as nonresponsive.

4 Q. Yes or no, does Pocatello Dental Group intend

5 to pay Dr. Misner \$100,000?

6 A. No.

7 MR. HAWKES: I object to the question and

8 instruct the witness not to answer. You are asking about

9 a document which on its face is a settlement proposal

10 document and would not be admissible in evidence.

11 MR. KAPLAN: He already answered.

12 (Deposition Exhibit No. 18 marked for

13 identification.)

14 Q. Have you seen Exhibit No. 18 before, Dr.

15 Romriell?

16 A. Yes, I think we have, I have.

17 Q. And is this a letter from the lawyer for

18 Pocatello Dental Group to the Idaho State Board of

19 Dentistry?

20 A. Yes, it's signed by Jim Price.

21 Q. Were you president at the time?

22 A. No.

23 Q. Do you know, was Dr. Misner president?

24 A. Yes.

25 Q. Do you know if he authorized this letter going

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1 out?

2 A. I don't know that; I assume that he had.

3 There was discussion about it.

4 Q. Now, there is a statement in the second

5 paragraph, do you see this deals with Dr. Dwight

6 Romriell's resignation?

7 A. Yes.

8 Q. The last sentence states, "InterDent was upset

9 about the resignation and threatened at the time to sue

10 Dr. Romriell if he left the practice."

11 Now, that wasn't true, was it?

12 A. I thought it was.

13 Q. Well, InterDent in fact threatened to sue Dr.

14 Romriell if he came on the premises after he left; isn't

15 that what happened?

16 A. They did that, yes.

17 Q. Why do you think InterDent threatened to sue

18 Dr. Romriell if he left the practice?

19 MR. HAWKES: Objection, asking him to call for

20 a state of mind of somebody besides the witness. You

21 don't have to answer that.

22 MR. KAPLAN: He told me he thought it was

23 true. I want to know why he thought it was true.

24 MR. HAWKES: You asked him what the state of

25 mind of InterDent was. If you want to rephrase the

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Page 100

1 hadn't been convicted of anything. Have you been  
2 prosecuted by the Internal Revenue Service?

3 A. No.

4 Q. Do you have tax liens against any of your  
5 property?

6 A. No. Is that relevant?

7 MR. KAPLAN: Thank you, I have no questions  
8 right now.

9 MR. HAWKES: I don't have anything.

10 MR. KERL: None.

11 EXAMINATION

12 BY MR. HAWKES:

13 Q. If I understood you correctly, Dr. Romriell,  
14 did you say that the dental group was losing money each  
15 month?

16 A. Yes.

17 Q. How long has it been losing money each month,  
18 to the best of your knowledge?

19 A. Three months.

20 MR. HEARN: That's all.

21 RE-EXAMINATION

22 BY MR. KAPLAN:

23 Q. Let me try to understand what you mean by the  
24 dental group is losing money. Are the dentists in  
25 Pocatello Dental Group still getting paid their 38 or

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1 whatever percentage?

2 A. Yes.

3 Q. Now, what expenses does Pocatello Dental Group  
4 itself pay?

5 A. We have an office that was built for twelve  
6 doctors. We have five doctors. You do the calculations.

7 Q. What expenses does Pocatello Dental Group  
8 itself as opposed to InterDent Services Corporation pay?

9 A. None.

10 Q. So when you said losing money, you aren't  
11 referring to Pocatello Dental Group itself, were you?

12 A. No.

13 Q. It's InterDent that's losing money.

14 A. Absolutely.

15 Q. For the past three months, so that would be --

16 A. Actually their first loss month was in  
17 September after Dr. Porton Sutton left.

18 Q. Were they profitable for a period after that?

19 A. Marginally.

20 Q. And for the past three months, it's been since  
21 Dr. Misner and Dr. Bybee left that they have been  
22 unprofitable again, correct?

23 A. Yes.

24 MR. KAPLAN: Okay, thank you.

25

RE-EXAMINATION

1 BY MR. HAWKES:

2 Q. Greg, to the extent you have talked about  
3 profitability, it's my understanding you are simply  
4 relying upon what InterDent claims the fact is; is that  
5 true?

6 A. Yes. We have no access to the records, to the  
7 total amount of dentistry that being done. The last  
8 several months they have given me a statement that I  
9 don't understand, I took it to Barbara Henderson, our  
10 bookkeeper-accountant-manager, and she tried to explain  
11 the numbers. And she said I don't know where they come  
12 up with these numbers. They don't make sense to me.

13 MR. HAWKES: That's all I have.

14 MR. KAPLAN: Thank you. We will recess this  
15 deposition which was the purpose for the TRO --

16 MR. HAWKES: Well, I saw no such limitation in  
17 the deposition notice. I made no agreement to that.

18 MR. KAPLAN: Under Judge Boyle's order I have  
19 another four hours or so with this witness. And he  
20 hasn't produced any documents, not a single one to date,  
21 so I am certainly not going to conclude this deposition,  
22 but we will recess for now.

23 MR. HAWKES: Whatever the orders are, we will  
24 honor those, but I certainly did not agree to any

25 limitation as stated.

1 MR. KAPLAN: Nor did you object, Mr. Hawkes.

2 MR. HAWKES: Well, where was the limitation  
3 stated?

4 MR. KAPLAN: I stated it to you in writing  
5 days ago.

6 MR. HAWKES: Not in the notice. Understood, I  
7 don't want to argue with you.

8 (Witness excused at 11:40 a.m.)

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## CERTIFICATE OF SERVICE

I certify that on this 8<sup>th</sup> day of July, 2004, I sent by fax a copy of the foregoing to counsel for the parties as shown below (excluding the complete deposition transcript which all counsel already have):

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO  
The Honorable Larry M. Boyle

POCATELLO DENTAL GROUP, P.C.,  
an Idaho Professional Corporation,  
  
*Plaintiff,*  
  
vs.  
  
INTERDENT SERVICE  
CORPORATION, a Washington  
Corporation,  
  
*Defendant,*  
  
vs.  
  
POCATELLO DENTAL GROUP, P.C.,  
an Idaho Professional Corporation;  
DWIGHT G. ROMRIELL, individually;  
LARRY K. MISNER, JR., individually;  
PORTER SUTTON, individually;  
ERNEST SUTTON, individually;  
GREGORY ROMRIELL, individually;  
ERROL ORMOND, individually; and  
ARNOLD GOODLIFFE, individually;  
  
*Counterdefendant and  
Third-party Defendants.*

Case No. CV-03-450-J-L MB  
  
**SUPPLEMENTAL FILING  
BY THIRD-PARTY  
DEFENDANTS  
DWIGHT G. ROMRIELL,  
GREGORY ROMRIELL,  
ERROL ORMOND, and  
ARNOLD GOODLIFFE  
TO JUNE 28<sup>TH</sup> HEARING  
ON MISNER TRO MOTION**